ORIGINAL

RESPONSE REQUESTED

Supreme Court, U.S.
FILED
OCT 24 2000
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, Petitioner,	§ § §	
v.	§	No. 00-122
JAMES CLIVE CLARK, JR., Respondent.	§ § §	

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

TO THE HONORABLE JUSTICES OF SAID COURT:

COMES NOW, Respondent, JAMES CLIVE CLARK, JR., who requests this Honorable Court for leave to proceed *in forma pauperis*, and would show the Court as follows:

I.

Respondent is indigent as plainly demonstrated by his financial affidavit which is attached to this request as Exhibit A. He has been incarcerated since 1990. In addition, he was determined to be indigent and had court-appointed counsel during the original appearances and sentencing proceedings in the District Court. There is nothing that indicates in any way that Respondent has the financial resources with which to pay for the expenses in these petition for writ of certiorari proceedings.

WHEREFORE, PREMISES CONSIDERED, the Respondent, JAMES CLIVE CLARK, JR., requests that this Court allow him to proceed *in forma pauperis*.

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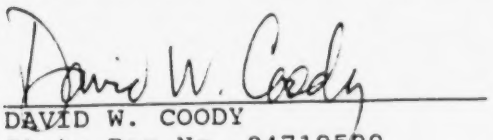
SUPREME COURT, U.S.

Respectfully submitted,



DAVID W. COODY
State Bar No. 04719500
Attorney at Law
1909 Woodall Rodgers Freeway
Suite 410
Dallas, Texas 75201
(214) 720-0585

COUNSEL FOR RESPONDENT

FINANCIAL AFFIDAVIT

CJA 23

IN SUPPORT OF REQUEST FOR ATTORNEY, EXPERT OR OTHER COURT SERVICES WITHOUT PAYMENT OF FEE REV. 1/90

IN UNITED STATES IN THE CASE OF: USA vs CLARK

☐ MAGISTRATE ☐ DISTRICT ☐ APPEALS COURT or ☐ OTHER PANEL (Specify below)

FOR: U.S. SUPREME COURT

AT:

LOCATION NUMBER:

PERSON REPRESENTED (Show your full name): JAMES CLIVE CLARK, JR.

CHARGE/OFFENSE (describe if applicable & check box →) ☐ Felony ☐ Misdemeanor

1 ☐ Defendant—Adult
2 ☐ Defendant—Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☒ Other (Specify) U.S. SUPREME COURT No. 00-122

DOCKET NUMBERS
Magistrate:
District Court:
Court of Appeals:

ASSETS

EMPLOYMENT

Are you now employed? ☐ Yes ☒ No ☐ Am Self Employed

Name and address of employer:

IF YES, how much do you earn per month? $

IF NO, give month and year of last employment 1990
How much did you earn per month $ 1200 ?

If married is your Spouse employed? ☐ Yes ☐ No

IF YES, how much does your Spouse earn per month $

If a minor under age 21, what is your Parents or Guardian's approximate monthly income $

OTHER INCOME

Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments, or other sources? ☐ Yes ☒ No

IF YES, GIVE THE AMOUNT RECEIVED & IDENTIFY THE SOURCES	RECEIVED	SOURCES
$		
$		
$		

CASH

Have you any cash on hand or money in savings or checking account ☐ Yes ☒ No IF YES, state total amount $

PROPERTY

Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? ☐ Yes ☒ No

IF YES, GIVE VALUE AND DESCRIBE IT	VALUE	DESCRIPTION
$		

OBLIGATIONS & DEBTS

DEPENDENTS

MARITAL STATUS
☐ SINGLE
☐ MARRIED
☐ WIDOWED
☒ SEPARATED OR DIVORCED

Total No. of Dependents:

List persons you actually support and your relationship to them

DEBTS & MONTHLY BILLS (LIST ALL CREDITORS INCLUDING BANKS, LOAN COMPANIES, CHARGE ACCOUNTS, ETC.)

APARTMENT OR HOME / Creditors	Total Debt	Monthly Pmt.
	$	$
	$	$
	$	$
	$	$

SIGNATURE OF DEFENDANT (OR PERSON REPRESENTED)

I certify the above to be correct.

James Clive Clark Jr. 10-18-00

WARNING: A FALSE OR DISHONEST ANSWER TO A QUESTION IN THIS AFFIDAVIT MAY BE PUNISHABLE BY FINE OR IMPRISONMENT, OR BOTH.

EXHIBIT A

BEST AVAILABLE COPY

No. 00-122

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, Petitioner,

v.

JAMES CLIVE CLARK, JR., Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

DAVID W. COODY
Attorney at Law
1909 Woodall Rodgers Freeway
Suite 410
Dallas, TX 75201
(214) 720-0585
Texas Bar No. 04719500

Counsel of Record for Respondent

QUESTION PRESENTED

WHETHER A DEFENDANT WHOSE SENTENCE WAS ENHANCED UNDER A FEDERAL RECIDIVIST PROVISION BECAUSE OF HIS PRIOR STATE CONVICTIONS, AND WHOSE STATE CONVICTIONS HAVE NOT BEEN SET ASIDE BY ANY COURT, MAY CHALLENGE HIS FEDERAL SENTENCE UNDER 28 U.S.C. 2255 BASED ON THE CLAIM THAT THE PRIOR STATE CONVICTIONS ARE CONSTITUTIONALLY INVALID.

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No. 99-9136 (2000).....6-7

No. 00-122

IN THE

SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA, Petitioner,

v.

JAMES CLIVE CLARK, JR., Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENT

OPINIONS BELOW

United States v. James Clive Clark, Jr.,

203 F.3d 358 (5th Cir. 2000).

United States v. James Clive Clark, Jr.,

996 F.Supp. 691 (S.D.Tex. 1998).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its opinion on February 8, 2000. Petitioner's Petition for Rehearing was denied by that Court on April 24, 2000. Jurisdiction of this petition for writ of certiorari is provided by 28 U.S.C. § 1254(1).

STATEMENT

The Respondent adopts the statement of the case as set out in the Government's Petition for Writ of Certiorari. (Pet.App. 2-7.)

DISCUSSION

The issue involved in this case is whether a defendant may use 28 U.S.C. 2255 to attack his federal sentence based upon the constitutional invalidity of prior state convictions used to enhance that sentence. The court below held that such a challenge was permitted, and the Government has petitioned this Court for review of that holding. Because this Court has already granted review of this precise issue in Daniels v. United States, No. 99-9136, and because the decision by the court below is in conflict with the decision of other circuits, (see Pet.App. 7), Thus, Respondent cannot argue against the grant of review in this case.

However, the Government requests that its petition for a writ of certiorari be held until after the final decision in Daniels and then be disposed of accordingly. Respondent opposes this request. The Daniels case is not so advanced as to prevent granting review in this case and joining it with Daniels for briefing and argument. Doing this would allow Respondent a fair opportunity to present his position which has previously been successful. Otherwise Respondent will not be able to adequately

participate in the decision of this issue which is obviously important to him, as well as many others similarly situated. Under these circumstances, the Court should grant review in this case and consolidate it with Daniels for briefing and argument.

CONCLUSION

The petition for a writ of certiorari in this case should be granted and consolidated for briefing and argument with Daniels v. United States, No. 99-9136.

Respectfully submitted,

DAVID W. COODY
1909 Woodall Rodgers Freeway
Suite 410
Dallas, Texas 75201
(214) 720-0585
Texas Bar No. 04719500

Counsel of Record for Petitioner

DAVID W. COODY
ATTORNEY AT LAW
1909 WOODALL RODGERS FREEWAY • SUITE 410 • DALLAS, TEXAS 75201
PHONE: 214/720-0585
FAX: 214/303-1562

June 9, 1994

Mr. William K. Suter
Office of the Clerk
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543-001

Re: United States v. James C. Clark, Jr.,
No. 00-122

Dear Mr. Suter:

Enclosed please find for filing in the above-referenced case the original and 10 typewritten copies of Mr. Clark's Brief for Respondent. Also enclosed are the appropriate Certificate of Service and the Motion for Leave to Proceed In Forma Pauperis.

Thank you for your attention in this matter, and please let me know if there are any problems.

Sincerely,

David W. Coody

David W. Coody

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UNITED STATES OF AMERICA Petitioner,	§ § §	
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CERTIFICATE OF SERVICE

On this the 24th day of October, 2000, I certify that true and correct copies of the Respondent's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and his BRIEF FOR RESPONDENT were mailed to opposing counsel for the United States:

Mr. Seth P. Waxman
Solicitor General
Department of Justice
Washington, D.C. 20530-0001

Executed on October 24, 2000.

David W. Coody

DAVID W. COODY

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